

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-090687
		C-090688
Plaintiff-Appellee,	:	C-090689
		TRIAL NOS. C-08TRC-60478A
vs.	:	C-08TRC-60478B
		C-08TRC-60478D
JOSEPH NOETH,	:	
Defendant-Appellant.	:	<i>JUDGMENT ENTRY.</i>

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Joseph Noeth, appeals his convictions for operating a motor vehicle while under the influence of alcohol (“OVI”) in violation of R.C. 4511.19(A)(1)(a) and 4511.19(A)(2), and for failing to maintain reasonable control of his vehicle in violation of R.C. 4511.202.

In a single assignment of error, Noeth challenges the weight and sufficiency of the evidence upon which his convictions were based.

The following facts were presented at trial. On November 9, 2008, at 3:20 a.m., Hamilton County Sheriff’s Deputy Mike Dumont was dispatched to investigate an automobile accident on Wesselman Road. When he arrived at the accident scene, Noeth flagged him down and asked to be taken to a hospital. Noeth stated that he had broken his left arm.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Dumont testified that the road was dry, and that there was very little traffic at the time. Noeth's car was in a ditch near a telephone pole that had been broken in half. According to Dumont, Noeth had driven his car off the roadway and had struck the telephone pole just behind his driver's door. The car had then rolled down a hill, flipped over a few times, and come to rest on its tires. Dumont testified that Noeth's injuries had been consistent with having been seated in the driver's seat at the time of the accident.

Dumont noticed that Noeth was staggering and thought that "it was due to intoxication." He opened the rear door of his cruiser so that Noeth could sit in the rear seat. As Dumont sat in the front seat of the cruiser, he detected a "very strong smell of alcohol" coming from Noeth. Noeth was slurring as he spoke. He denied having consumed any alcoholic beverages. Dumont arrested Noeth for driving under the influence.

Noeth was taken in an ambulance to a hospital. At the hospital, Dumont requested that Noeth submit to a blood test and advised him of the consequences of his refusal of or submission to the test. Noeth refused.

At trial, Noeth stipulated that he had a prior OVI conviction within the previous 20 years.

R.C. 4511.19(A)(1)(a) states, "No person shall operate any vehicle * * *, if, at the time of the operation * * * [t]he person is under the influence of alcohol, a drug of abuse, or a combination of them." The three elements of a charge brought pursuant to R.C. 4511.19(A)(2) are (1) an OVI conviction within 20 years of the current violation, (2) operation of a motor vehicle while under the influence of alcohol or drugs, and (3) a refusal to submit to a chemical test while under arrest for the

current OVI violation.² Under R.C. 4511.202, “No person shall operate a motor vehicle * * * on any street * * * without being in reasonable control of the vehicle.”

Following our review of the record, we hold that Noeth’s convictions were based upon sufficient evidence.³ Moreover, we hold that his convictions were not against the manifest weight of the evidence.⁴

We note that the trial court sentenced Noeth for violations of both R.C. 4511.19(A)(1)(a) (driving under the influence), and R.C. 4511.19(A)(2), (driving under the influence and refusing to submit to a chemical test). Imposition of multiple sentences for allied offenses of similar import is plain error.⁵ Accordingly, we overrule Noeth’s assignment of error, but we vacate the trial court’s sentences for the two OVI offenses, and remand this cause for the trial court to sentence Noeth for either the R.C. 4511.19(A)(1)(a) violation or the R.C. 4511.19(A)(2) violation. The trial court’s judgment is affirmed in all other respects.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 17, 2010

per order of the Court _____.
Presiding Judge

² See *State v. Hoover*, 123 Ohio St.3d 418, 2009-Ohio-4993, 916 N.E.2d 1056, ¶13, certiorari denied, *Hoover v. Ohio* (2010), ____ U.S. ____, 130 S.Ct. 2380.

³ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

⁴ See *State v. Thompson*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁵ See *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶31, citing *State v. Yarbrough*, 104 Ohio St.3d 1, 2004-Ohio-6087, 817 N.E.2d 845.